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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,227	12/27/2000	David S. Luskin	122899-01	5222

7590 10/23/2002

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EXAMINER

CHIU, RALEIGH W

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/749,227

Applicant(s)

LUSKIN ET AL.

Examiner

Raleigh Chiu

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Newly amended claims 10-14 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these method claims are considered to be distinct from apparatus claim 15 because the apparatus as claimed can be produced by a materially different process. That is to say, the apparatus does not require different holes offset from an initial nominal intersection angle.

2. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10-14 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 112***

3. The rejection to claim 8 under 35 USC 112, first paragraph is withdrawn as applicant has shown support in the specification where only certain strings are tensioned.

***Claim Rejections - 35 USC §§ 102 and 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Claremont as applied in the previous Office action.

Regarding claims 1 and 15, all the structural limitations of the frame, handle and angled string arrangement are found in, and therefore anticipated by, Claremont. Regarding the limitations "intersection angle is selected to completely eliminate distortion" (claim 1) and "said strings having been restrung and re-tensioned in order to achieve said angular relationships, whereby the frame is not distorted" (claim 15), the reason why the angle is chosen or the method in which the strings are strung is irrelevant to § 102 because such functional statements do not define any structure and accordingly cannot serve to distinguish the claims, which are not process claims, from the reference. Applicant is reminded that anticipation is established in apparatus claims when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. It is only necessary that the claims read on something disclosed in the reference, i.e., all structural

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limitations of the claims are found in the reference or fully met by it.

6. Claims 2-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claremont for the reasons set forth in the previous Office action.

With further regard to claims 5, 6, and 9, absent a showing of new or unobvious results, it would have been obvious to one of ordinary skill in the art to vary the string tension or string pattern density to determine the optimum degree of desired distortion since it is well-known that such parameters contribute to the stresses imposed on the racquet frame.

Although applicant contends that the recited angles and spaces would not be obvious to one of ordinary skill but provides no objective evidence to support this contention. Arguments cannot take the place of evidence.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Claremont as applied above in view of well-known stringing techniques described by the United States Racquet Stringing Association on page 11 of "Racquet Service Techniques: Main Strings-Pulling Tension" (USRSA).

Although Claremont is silent with respect to stringing technique, it would have been obvious to one of ordinary skill in the art to string the Claremont racquet such that every other

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string is tensioned in view of the USRSA which discloses that it is well-known in the racquet stringing industry that some stringers feel that tensioning every other string saves time.

### ***Response to Arguments***

8. Applicant's arguments filed 15 July 2002 have been fully considered but they are not persuasive for the reasons set forth above.

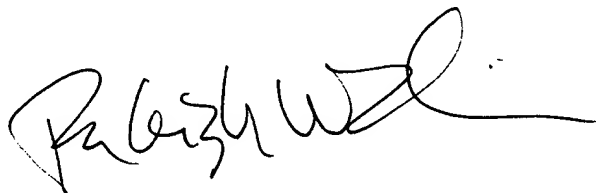
### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700